

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

18-md-02865-LAK

CUSTOMS AND TAX ADMINISTRATION OF
THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX REFUND
SCHEME LITIGATION

**Request for International Judicial
Assistance pursuant to the Hague
Convention of 18 March 1970 on
the Taking of Evidence Abroad in
Civil or Commercial Matters**

This document relates to: All Cases.

The United States District Court for the Southern District of New York presents its compliments to the appropriate judicial authority of the Kingdom of Denmark, and requests international judicial assistance to obtain evidence to be used in a civil proceeding before this court in the above captioned matter. This request is made pursuant to and in conformity with the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.

This Court requests the assistance described herein as necessary in the interests of justice. The assistance requested is for the appropriate judicial authority of Denmark to compel the below-named individual to provide testimony.

This Court considers that the evidence sought is directly relevant to issues of fact and law that may influence the final determination of the existence, non-existence, and/or extent of any liability in this matter. This request is made with the understanding that it will in no way require any person to commit any offense, or to undergo a broader form of inquiry than they would if the litigation were conducted in the Kingdom of Denmark. It is expected, based on existing timetables, that the United States District Court for the Southern District of New York may schedule trial in or around 2021. Potential summary judgment motions would be due before

trial. In the United States, parties may move for summary judgment. A party moving for or opposing summary judgment must present evidence to support its arguments, as they do at trial. The following request is made in support of the pending proceedings in New York.

The particulars of this Hague Evidence Request are as follows:

- 1. Sender** The Honorable Lewis A. Kaplan
District Judge
United States District Court for the Southern District of
New York
- 2. Central Authority of the Requested State** Ministry of Justice
Procedural Law Division
Slotsholmsgade 10
1216 COPENHAGEN K
Denmark
- 3. Person to whom the executed request is to be returned** Sharon L. McCarthy
Kostelanetz & Fink, LLP
7 World Trade Center, 34th Floor
New York, NY 10007
Tel.: (212) 808-8100
Fax: (212) 808-8108
Email: smccarthy@kflaw.com
- 4. Specification of the day by which the requesting authority requires receipt of the response to the Letter of Request**

Date April 30, 2021

Reason for Urgency, if applicable Discovery is underway in this matter and trial may be scheduled to occur in 2021.

IN CONFORMITY WITH ARTICLE 3 OF THE CONVENTION, THE UNDERSIGNED APPLICANT HAS THE HONOR TO SUBMIT THE FOLLOWING REQUEST:

- 5a. Requesting judicial authority (Article 3,a)** The Honorable Lewis A. Kaplan
District Judge

United States District Court for the Southern District of
New York

**5b. To the competent
authority of (Article 3,a)**

The Kingdom of Denmark

**5c. Names of the case and any
identifying number**

In re Customs and Tax Administration of the Kingdom of
Denmark (SKAT) Tax Refund Scheme Litigation, 18-md-
2865 (LAK)

6. Names and addresses of the parties and their representatives

a. Plaintiff

SKAT
Østbanegade 123
2200 København Ø
Denmark

Representatives

William R. Maguire
Marc A. Weinstein
Neil J. Oxford
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, New York 10004-1482
United States of America

b. Defendants

Please refer to the attached Appendix A

Representatives

Please refer to the attached Appendix A

7. Nature of the Proceedings

a. Background

In May and June 2018, Plaintiff SKAT filed 140 similar complaints in eleven different federal judicial districts. On October 3, 2018, the federal complaints were consolidated in this Multi-District Litigation (“MDL”) and assigned to the Honorable Lewis A. Kaplan. Since that time, SKAT filed several additional complaints which are consolidated into the MDL. SKAT filed amended complaints on April 20, 2020, against the particular Defendants seeking the evidence described below. Defendants answered the amended complaints on June 29, 2020.

Defendants are pension, profit sharing, or stock bonus plans qualified under section 401(a) of the United States Internal Revenue Code, exempt from taxation under section 501(a) of the United States Internal Revenue Code, and residents of the United States of America for purposes of U.S. taxation. Defendants applied for and received dividend tax reclaims from Plaintiff SKAT related to Defendants' ownership of shares in Danish companies listed on the OMX Copenhagen 20 Index, the 20 most-traded stocks in Denmark. Danish companies are required to withhold 27% tax on dividends they pay to shareholders. Under certain double taxation treaties between Denmark and other countries, including the United States, this tax is reimbursable to certain non-Danish shareholders, including pension, profit sharing, and stock bonus plans qualified under section 401(a) of the Internal Revenue Code. Defendants, acting through their agents and representatives, applied to SKAT claiming repayments of tax withheld on dividends that they earned on shares of Danish companies that they held. SKAT claims that Defendants did not own the shares forming the basis of those tax reclaim applications. SKAT alleges that it paid baseless withholding tax refund claims.

The witness whose testimony is sought pursuant to this Letter of Request is a former SKAT employee named Jette Zester.

b. Summary of Complaints

The allegations in Plaintiff SKAT's complaints in the consolidated actions are substantially similar. SKAT brought complaints against three classes of defendants: "Plan Defendants," the pension plans that SKAT claims received baseless dividend withholding tax refunds; "Authorized Representative Defendants," individuals who signed powers of attorney authorizing Payment Agents to submit dividend withholding tax refund claims to SKAT; and "Incorporator Defendants," defendants who incorporated business entities associated with the

Plan Defendants that submitted dividend withholding tax refund claims to SKAT. The conduct at the heart of Plaintiff SKAT's complaints is alleged to have occurred between 2012 and 2015. Plaintiff asserts claims for fraud, aiding and abetting fraud, payment by mistake, unjust enrichment, negligent misrepresentation, and related claims.

c. Summary of Defenses

Defendants deny all allegations of wrongdoing made by SKAT. Defendants assert numerous defenses to SKAT's allegations. Defendants maintain that they acted at all times reasonably and with due care, reasonably relied upon the actions and statements of others, and did not directly or indirectly cause, induce, aid, or abet any acts constituting the claims asserted by SKAT. Defendants assert that they did not engage in any unlawful conduct and are not liable for any unlawful acts that may have been committed by others. Furthermore, Defendants contend that if SKAT suffered any loss, damage, or injury, such alleged loss, damage, or injury was caused in whole or in part by SKAT's own negligence, SKAT's assumption of risk, and/or other culpable parties and/or third parties to this action, other than Defendants, for whose acts or omissions or breaches of legal duty Defendants are not liable. Finally, Defendants allege that SKAT's claims are barred by the applicable statutes of limitations.

d. Other Necessary Information or Documents

8a. Evidence to be obtained or other judicial act to be performed (Article 3,d)

Defendants seek testimony from Jette Zester

8b. Purpose of the evidence or other judicial act sought

The witness's testimony is relevant to establishing one or more of Defendants' defenses in this action.

9. Identity and address of any person to be examined (Article 3,e)

Jette Zester was a special consultant at SKAT from at least 2002 through 2013.

Jette Zester may be found at
Blovstrødvej 51, 3450 Allerød

10. Questions to be put to the person to be examined or statement of the subject-matter about which they are to be examined (Article 3,f)

a. Definitions

- i. “SKAT” – Skatteforvaltningen and any officers, directors, managers, employees, or agents thereof.
- ii. “Ministry” – the Danish Ministry of Taxation.
- iii. “Tenure” – the period of time from approximately 2002 forward, during which time Jette Zester was employed by SKAT.
- iv. “Minister” – Minister of Taxation for Denmark.
- v. “Risk” any likelihood that SKAT issued an Erroneous Refund of dividend taxes.
- vi. “Erroneous Refund” – a refund of dividend tax issued to an applicant not eligible to receive such refund.
- vii. “Control” – any policy, procedure, directive, or other rule that would have increased the information reported to SKAT, provided SKAT with greater ability to assess the validity of any individual dividend tax reclaim application, or decreased Risk.
- viii. “Problemkatalog” – a memorandum prepared by Jette Zester and Lisbeth Rømer in approximately 2006 outlining various control gaps and proposed solutions thereto in connection with SKAT’s administration of dividend taxes.

- ix. “Reclaim Agent” – any of Goal Group, Syntax GIS, or Acupay, which firms submitted dividend reclaim applications on behalf of shareholders.

b. Subject of Testimony

The subject of Jette Zester’s testimony will be:

- i. The identities and responsibilities of all SKAT employees with responsibility for any component of dividend tax administration during her Tenure;
- ii. The organizational structure within SKAT, including the management chain of command, and any changes to that structure during her Tenure;
- iii. Her knowledge that SKAT lacked the ability to independently verify the ownership of stocks associated with reclaim applications;
- iv. Her knowledge that SKAT lacked the ability to independently verify whether dividend taxes had in fact been withheld with respect to such stocks identified in a reclaim application;
- v. Her knowledge of the schedule and process for reporting of dividend payment information to SKAT;
- vi. Her knowledge that SKAT was issuing Erroneous Refunds;
- vii. Her knowledge regarding the volume of dividend tax refunds issued by SKAT;
- viii. Her knowledge regarding the volume of Erroneous Refunds issued by SKAT;

- ix. The facts known to SKAT in connection with a 2006 dividend reclaim application submitted by Bankers Trust Opera Trading and related to shares in TDC;
- x. The specific factual concerns raised by any SKAT employee and related to Bankers Trust Opera Trading's dividend reclaim application;
- xi. Her knowledge of all other conditions contributing to Risk;
- xii. All communications with SKAT or other Ministry of Taxation officials concerning Risk, including but not limited to the Problemkatalog and any drafts thereof or predecessor memoranda;
- xiii. Meetings she attended with SKAT, Ministry, or Danish Bankers Association members to discuss Controls;
- xiv. Her response to any communication, whether written or oral, identifying, discussing, or warning of any Risk;
- xv. All Controls proposed during her Tenure;
- xvi. The extent and impact of resource constraints within SKAT and their effect on dividend tax administration;
- xvii. Her understanding of the prevailing political trends in Denmark and the challenges they presented to implementing Control measures;
- xviii. The factual and legal basis for the Problemkatalog;
- xix. The efforts to seek ministerial approval of an order changing the dividend reporting deadline so that it was closer in time to SKAT's payment of dividend refunds and her understanding of why it took years for that order to be executed; and

xx. Authentication of documents if necessary.

11. Documents or other property to be inspected (Article 3,g)

Any and all contemporaneous notes, memoranda, testimony, or correspondence in the possession, custody or control of Jette Zester related to the Subject of Testimony.

12. Any requirement that the evidence be given on oath or affirmation and any special form to be used (Article 3,h)

The examinations shall be taken under the Federal Rules of Civil Procedure of the United States of America, except to the extent such procedure is incompatible with the law of the Kingdom of Denmark. The testimony shall be given under oath.

13. Special methods or procedure to be followed (Articles 3,i and 9)

The United States District Court for the Southern District of New York respectfully requests that:

- a. The Parties' United States and Danish lawyers be permitted to attend the oral testimony and ask supplementary questions of the witness;
- b. The Parties' United States and Danish lawyers be permitted to examine and cross-examine the witnesses directly;
- c. The Parties' United States and Danish lawyers be allowed to participate in the oral testimony of the requested witnesses by video-conference per the enclosed 'Optional Form For Video-Link Evidence,' as practicable and in discussion with the Ministry of Justice regarding technical logistics and that the video-conference be recorded and a copy provided to the Parties;

Oral testimony of the witnesses be videotaped and recorded verbatim, and that a professional videographer and a professional stenographer be permitted to attend the oral testimony in order to record the testimony; the costs of the court reporter or of the videographer being at the charge of defendants.

14. Request for notification of the time and place for the execution of the Request and identity and address of any person to be notified (Article 7)

It is requested that testimony be taken at such place, date or time as ordered by the Ministry of Justice and/or as otherwise scheduled by the representatives of the Defendants and/or as otherwise agreed to by the witnesses and the respective representatives of the Parties.

Notice thereof should be made to Defendants' Danish designee:

Kasper Bech Pilgaard
TVC Law Firm
Nimbusparken 24, 2d fl., 2000 Frederiksberg,
Copenhagen, Denmark

15. Request for attendance or participation of judicial personnel of the requesting authority at the execution of the Letter of Request (Article 8)

None.

16. Specification of privilege or duty to refuse to give evidence under the law of the State of origin (Article 11,b)

Under the laws of the United States, a party has a privilege to refuse to disclose the contents of a confidential communication between that party and an attorney that was made for the purpose of obtaining legal advice. Waiver of the privilege over some communications, in some circumstances, can be deemed a waiver of privilege over other communications concerning the same subject matter.

Parties also enjoy limited privileges not relevant here, such as communications between physician and patient, psychotherapist and patient, husband and wife, or clergy and penitent.

United States law also recognizes a testimonial privilege against criminal self-incrimination. This privilege does not apply to production of documents.

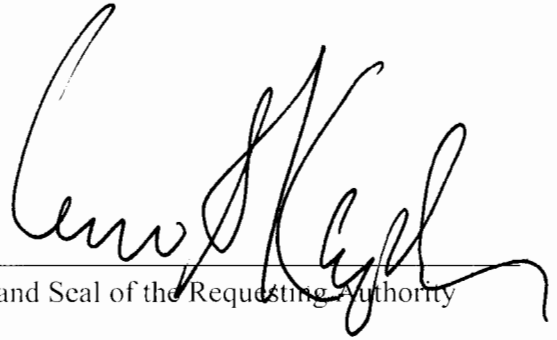
Outside the strict area of privilege, certain limited immunities are available that may place restrictions on the giving of evidence, such as the limited protection of documents created by attorneys in anticipation of litigation.

17. The fees and costs incurred which are reimbursable under the second paragraph of Article 14 or under Article 26 of the Convention will be borne by

Defendants

Date of Request:

5/3/21



Signature and Seal of the Requesting Authority

APPENDIX A

Defendants	Counsel	Associated Case(s)
John van Merkensteijn, III	Sharon L. McCarthy	19-cv-01866
	Caroline Ciraolo	19-cv-01865
	Nicholas S. Bahnsen	19-cv-01906
	Kostelanetz & Fink LLP	19-cv-01894
	7 World Trade Center, 34 th Floor	19-cv-01911
	New York, New York 10007	19-cv-01871
	Tel: (212) 808-8100	19-cv-01930
	Fax: (212) 808-8108	19-cv-01873
	cciraolo@kflaw.com	19-cv-01794
	slmccarthy@kflaw.com	19-cv-01798
	nbahnsen@kflaw.com	19-cv-01788
		19-cv-01918
		19-cv-01928
		19-cv-01931
		19-cv-01800
		19-cv-01803
		19-cv-01809
		19-cv-01818
		19-cv-01801
		19-cv-01810
		19-cv-01813
Elizabeth van Merkensteijn		19-cv-01893
Azalea Pension Plan		19-cv-01893
Basalt Ventures LLC Roth 401(K) Plan		19-cv-01866
Bernina Pension Plan		19-cv-01865
Bernina Pension Plan Trust		19-cv-10713
Michelle Investments Pension Plan		19-cv-01906
Omineca Pension Plan		19-cv-01894
Omineca Trust		19-cv-01794
		19-cv-01798
		19-cv-01788
		19-cv-01918
		19-cv-01928
		19-cv-01931

		19-cv-01800 19-cv-01803 19-cv-01809 19-cv-01818 19-cv-01801 19-cv-01810 19-cv-01813
Remece Investments LLC Pension Plan		19-cv-01911
Starfish Capital Management LLC Roth 401(K) Plan		19-cv-01871
Tarvos Pension Plan		19-cv-01930
Voojo Productions LLC Roth 401(K) Plan		19-cv-01873
Xiphias LLC Pension Plan		19-cv-01924
Richard Markowitz	Alan E. Schoenfeld Wilmer Cutler Pickering Hale and Dorr LLP 7 World Trade Center 250 Greenwich Street New York, NY 10007 Telephone: (212) 230-8800 alan.schoenfeld@wilmerhale.com	19-cv-01867 19-cv-01895 19-cv-01869 19-cv-01868 19-cv-01898 19-cv-10713 19-cv-01896 19-cv-01783 19-cv-01922 19-cv-01926 19-cv-01929 19-cv-01812 19-cv-01870 19-cv-01792 19-cv-01806 19-cv-01808 19-cv-01815
Jocelyn Markowitz		19-cv-01904
Avanix Management LLC Roth 401(K) Plan		19-cv-01867
Batavia Capital Pension Plan		19-cv-01895

Calypso Investments Pension Plan		19-cv-01904
Cavus Systems LLC Roth 401(K) Plan		19-cv-01869
Hadron Industries LLC Roth 401(K) Plan		19-cv-01868
RJM Capital Pension Plan		19-cv-01898
RJM Capital Pension Plan Trust		19-cv-10713
Routt Capital Pension Plan		19-cv-01896
Routt Capital Trust		19-cv-01783 19-cv-01922 19-cv-01926 19-cv-01929 19-cv-01812 19-cv-01870 19-cv-01792 19-cv-01806 19-cv-01808 19-cv-01815
Rob Klugman	Mark D. Allison Caplin & Drysdale, Chartered 600 Lexington Avenue 21 st Floor New York, NY 10022 Tel: (212) 379-6000 mallison@capdale.com zziering@capdale.com	18-cv-07828 18-cv-07827 18-cv-07824 18-cv-07829 18-cv-04434
RAK Investment Trust		
Aerovane Logistics LLC Roth 401(K) Plan		18-cv-07828
Edgepoint Capital LLC Roth 401(K) Plan		18-cv-07827
Headsail Manufacturing LLC Roth 401(K) Plan		18-cv-07824
The Random Holdings 401(K) Plan		18-cv-07829

The Stor Capital Consulting LLC 401(K) Plan		18-cv-04434
Joseph Herman	Michelle A. Rice Kaplan Rice LLP 142 West 57 th Street Suite 4A New York N.Y. 10019 (212) 333-0227 mrice@kaplanrice.com	1:19-cv-01785
		1:19-cv-01781
		1:19-cv-01791
		1:19-cv-01794
David Zelman		1:19-cv-01918
		1:19-cv-01783
		1:19-cv-01798
		1:19-cv-01788
Edwin Miller		1:19-cv-01926
		1:19-cv-01922
		1:19-cv-01928
		1:19-cv-01929
		1:19-cv-01931
Ronald Altbach		1:19-cv-01809
		1:19-cv-01800
		1:19-cv-01803
		1:19-cv-01812
		1:19-cv-01818
Perry Lerner		1:19-cv-01806
		1:19-cv-01870
		1:19-cv-01792
		1:19-cv-01808
		1:19-cv-01815
Robin Jones		1:19-cv-01801
		1:19-cv-01810
		1:19-cv-01813
Ballast Ventures LLC Roth 401(K) Plan		1:19-cv-01781
Bareroot Capital Investments LLC Roth 401(K) Plan		1:19-cv-01783
Albedo Management LLC Roth 401(K) Plan		1:19-cv-01785

Dicot Technologies LLC Roth 401(K) Plan	1:19-cv-01788
Fairlie Investments LLC Roth 401(K) Plan	1:19-cv-01791
First Ascent Worldwide LLC Roth 401(K) Plan	1:19-cv-01792
Battu Holdings LLC Roth 401(K) Plan	1:19-cv-01794
Cantata Industries LLC Roth 401(K) Plan	1:19-cv-01798
Crucible Ventures LLC Roth 401(K) Plan	1:19-cv-01800
Monomer Industries LLC Roth 401(K) Plan	1:19-cv-01801
Limelight Global Productions LLC Roth 401(K) Plan	1:19-cv-01803
Loggerhead Services LLC Roth 401(K) Plan	1:19-cv-01806
PAB Facilities Global LLC Roth 401(K) Plan	1:19-cv-01808
Plumrose Industries LLC Roth 401(K) Plan	1:19-cv-01809
Pinax Holdings LLC Roth 401(K) Plan	1:19-cv-01810
Roadcraft Technologies LLC Roth 401(K) Plan	1:19-cv-01812
Sternway Logistics LLC Roth 401(K) Plan	1:19-cv-01813
Trailing Edge Productions LLC Roth 401(K) Plan	1:19-cv-01815

True Wind Investments LLC Roth 401(K) Plan		1:19-cv-01818
Eclouge Industry LLC Roth 401(K) Plan		1:19-cv-01870
Vanderlee Technologies Pension Plan		1:19-cv-01918
Vanderlee Technologies Pension Plan Trust		1:19-cv-01918
Cedar Hill Capital Investments LLC Roth 401(K) Plan		1:19-cv-01922
Green Scale Management LLC Roth 401(K) Plan		1:19-cv-01926
Fulcrum Productions LLC Roth 401(K) Plan		1:19-cv-01928
Keystone Technologies LLC Roth 401(K) Plan		1:19-cv-01929
Tumba Systems LLC Roth 401(K) Plan		1:19-cv-01931
Sander Gerber	Stephen D. Andrews	18-cv-4899
Sander Gerber Pension Plan	Amy B. McKinlay Williams & Connolly LLP 725 Twelfth Street, N.W. Washington, DC 20005 (202) 434-5000 amckinlay@wc.com sandrews@wc.com	18-cv-4899
Michael Ben-Jacob	Thomas E. L. Dewey Dewey Pegno & Kramarsky LLP 777 Third Avenue – 37th Floor New York, New York 10017 Tel.: (212) 943-9000 Fax: (212) 943-4325 E-mail: tdewey@dpklaw.com	1:18-cv-04434 1:18-cv-07824 1:18-cv-07827 1:18-cv-07828 1:18-cv-07829 1:19-cv-01781 1:19-cv-01783 1:19-cv-01785 1:19-cv-01788 1:19-cv-01791

		1:19-cv-01792 1:19-cv-01794 1:19-cv-01798 1:19-cv-01800 1:19-cv-01801 1:19-cv-01803 1:19-cv-01806 1:19-cv-01808 1:19-cv-01809 1:19-cv-01810 1:19-cv-01812 1:19-cv-01813 1:19-cv-01815 1:19-cv-01818 1:19-cv-01866 1:19-cv-01867 1:19-cv-01868 1:19-cv-01869 1:19-cv-01870 1:19-cv-01871 1:19-cv-01873 1:19-cv-01894 1:19-cv-01896 1:19-cv-01918 1:19-cv-01922 1:19-cv-01926 1:19-cv-01928 1:19-cv-01929 1:19-cv-01931
Acer Investment Group LLC	John C. Blessington K&L GATES LLP State Street Financial Center One Lincoln Street Boston, MA 02111 T: 617.261.3100 F: 617.261.3175 E: john.blessington@klgates.com	18-cv-09841 18-cv-09797 18-cv-09836 18-cv-09837 18-cv-09838 18-cv-09839 18-cv-09840 18-cv-10100 18-cv-05053
American Investment Group of New York, L.P. Pension Plan		18-cv-09841
DW Construction, Inc. Retirement Plan		18-cv-09797

Kamco Investments Inc. Pension Plan		18-cv-09836
Kamco LP Profit Sharing Pension Plan		18-cv-09837
Linden Associates Defined Benefit Plan		18-cv-09838
Moirra Associates LLC 401K Plan		18-cv-09839
Newsong Fellowship Church 401K Plan		18-cv-10100
Riverside Associates Defined Benefit Plan		18-cv-09840
Robert Crema		
Stacey Kaminer		18-cv-09841
		18-cv-09841
		18-cv-09797
		18-cv-09836
		18-cv-09837
Alexander Jamie Mitchell III		18-cv-09839
David Schulman		18-cv-10100
Joan Schulman		18-cv-09840
Darren Wittwer		18-cv-09838
		18-cv-09797
Sheldon Goldstein	Martin H. Kaplan	18-cv-5053
Scott Goldstein	Kari Parks	
The Goldstein Law Group	Gusrae Kaplan Nusbaum PLLC	
PC 401(k) Profit Sharing	120 Wall Street	
Plan	New York, NY 10005	
	T: (212) 269-1400	
	mkaplan@gusraekaplan.com	
	kparks@gusraekaplan.com	